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Supreme Court, U.S.
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No. 94-2135

In The

Supreme Court of the United States

October Term, 1995

CITY OF MORGAN CITY,

Petitioner,

v.

SOUTH LOUISIANA ELECTRIC COOPERATIVE ASSOCIATION, CAJUN ELECTRIC POWER COOPERATIVE, INC., AND THE UNITED STATES OF AMERICA, through the RURAL UTILITIES SERVICE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

James M. Funderburk
Bar Roll No. 5785
Duval, Funderburk, Sundbery & Lovell, L.L.P.
101 Wilson Avenue
Post Office Box 3017
Houma, Louisiana 70361
Telephone: (504) 876-6410
Attorney for Respondent, South Louisiana Electric Cooperative Association

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Does 7 U.S.C. § 907 preempt, by conflict and pursuant to the Supremacy Clause, the state expropriation power granted by the State of Louisiana to the City of Morgan City if the unilateral taking of the utility customers in question would frustrate a federal purpose?

PARTIES TO THE PROCEEDING BELOW

All parties to the proceeding below are named in the caption. The United States appeared below through the Rural Electrification Administration, an agency within the United States Department of Agriculture charged through its Administrator with responsibility for the Rural Electrification Act. As part of its reorganization of the Department of Agriculture, Congress has created a new federal agency within the Department, the Rural Utilities Service, and assigned to its Administrator the administration of the Rural Electrification Act. The caption of this Petition reflects that change.

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Respondent, South Louisiana Electric Cooperative Association, hereinafter sometimes referred to as SLECA, a Louisiana electric cooperative domiciled in Houma, Terrebonne Parish, Louisiana, respectfully suggests that a writ of certiorari need not issue because the judgment and opinion of the courts below are correct.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit dated September 12, 1994, is reported at 31 F.3d 319, and is set forth in the Appendix[1] of petitioner at 1a. There is a per curiam opinion of April 3, 1995, reported at 49 F.3d 1074 but there was no rehearing as stated by petitioner. There was a dissent written by Judge Jones on behalf of the three judges who dissented from the denial of rehearing en banc and which is reported at 49 F.3d 1076, both of which opinions are set forth appropriately in the petitioner's Appendix. The opinions of the majority of the Fifth Circuit affirmed the opinion of the United States District Court for the Western District of Louisiana, Honorable Rebecca F. Doherty, which is reported at 837 F.Supp. 194 and is set forth at App. 12a. One additional relevant decision is that of the Rural Electrification Administration (now known as the Rural Utilities Service and which may sometimes hereinafter be referred to as REA) which is set forth at petitioner's App. 35a.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on September 12, 1994. The petition for rehearing was denied on April 3, 1994, as was the denial of rehearing en banc. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

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[1] For the sake of brevity, respondent will refer to the Appendix of petitioner throughout this brief.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Rural Electrification Act, 7 U.S.C. § 901, et seq., are applicable and are set forth at petitioner's App. 76a. The Supremacy Clause, United States Constitution, art. VI, cl. 2, is also applicable and is set forth at petitioner's App. 82a.

STATEMENT OF THE OPINIONS BELOW

The trial court determined that 7 U.S.C. § 907 preempts, by conflict and pursuant to the Supremacy Clause, the state expropriation power granted by the State of Louisiana to the City of Morgan City because it would frustrate a federal purpose, that of providing electricity to rural America at a reasonable cost. In reaching this decision, the trial court followed well-reasoned and longstanding federal decisions in the Ninth and Fifth Circuits. There are no other federal decisions in any circuit or in this Honorable Court to the contrary. *Public Utility District No. 1 of Pend Oreille County v. United States*, 417 F.2d 200 (9th Cir. 1969); *Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc.*, 618 F.2d 601 (9th Cir. 1980); and *City of Madison, Mississippi v. Bear Creek Water Association, Inc.*, 816 F.2d 1057 (5th Cir. 1987).

The trial court reasoned as did both the *Pend Oreille* and *Big Bend* courts that 7 U.S.C. § 907 covered both voluntary and involuntary dispositions of property. The involuntary dispositions being caused by the unilateral actions of municipalities exercising their rights of eminent domain/expropriation.

The Fifth Circuit affirmed the district court on the broader constitutional issue that the state law expropriation is preempted because it would frustrate a federal purpose although in its per curiam opinion denying Morgan City's Petition for Rehearing, the court noted that even a narrow

interpretation of § 907 supports the original preemption analysis and thus Morgan City's attempt to expropriate the subject property was precluded.[2]

Petitioner now tries to convince this court that the Decision of the Fifth Circuit Court of Appeal somehow "curtails the natural expansion of many cities that provide public power to their citizens and nullifies state laws and policies that afford municipalities the exclusive right to provide electric service to their citizens", p. 2 of petitioner's brief. Petitioner also reaches deep into its bag of tricks and cites the dissent in the denial of the rehearing en banc as a breathtaking federal power grab. It is nothing of the sort. First and foremost, the expansion of the City of Morgan City occurred long ago and had nothing whatsoever to do with the expropriation which followed many years later. Specifically, the annexation is a three-phase one. *Phase I* occurred in the early 1980's and did not involve any potential utility customers and so was never an issue. *Phase II* occurred in 1986, whereas the Petition for Expropriation was not filed until August 3, 1990, following off and on again negotiations between SLECA and the City of Morgan City. It does involve the utility customers which are the subject of this case. *Phase III* annexation has not yet occurred but will occur according to the sworn testimony of the Honorable Cedric S. LaFleur, mayor of the City of Morgan City, and its consulting engineer, Harold J. Beard, App. 14a. This court should not be misguided then by the false issue which petitioner attempts to create, that somehow the natural annexation process which occurs throughout this country will be affected or that the state laws which allow for the annexation will somehow be weakened or that the state's constitutional rights to annex new territory is abridged. The annexation of the areas in question has occurred and is not at all affected by the separate issue of under what circumstances a municipality may expropriate utility customers within an

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[2] *City of Morgan City v. South Louisiana Electric Cooperative Association*, 49 F.3d 1074 (5th Cir. 1995).

area that has been annexed. The two issues are totally separate and distinct and the municipalities have lost nothing because their rights of annexation remain intact. Stated slightly differently, the right of annexation has nothing to do with the power of eminent domain (expropriation).

HISTORICAL OVERVIEW

SLECA is a distribution cooperative headquartered in Houma, Terrebonne Parish, Louisiana, and provides service in the southeastern portion of the state to approximately 15,000 members in a five parish area. Since February 3, 1937, SLECA has received 25 REA federally subsidized loans totaling over $38 Million and supplemental financing from other lenders exceeding $12 Million. As of December 31, 1991, SLECA owed REA in excess of $25 Million and its counterpart, National Rural Utilities Cooperative Finance Corporation (CFC) in excess of $9 Million. SLECA serves a relatively low income area and purchases all of its power requirements from Cajun Electric Power Cooperative, Inc. (CAJUN), a generation and transmitting utility company to which it is bound through a wholesale power contract that extends through December 31, 2026. SLECA's key financial ratios and other statistics are below the median values of other cooperatives located in Louisiana and in the United States. There are no certified electric service territories in Louisiana and thus, the relative competitiveness of SLECA's retail rates is important to SLECA's financial health. As of January 1, 1992, CAJUN's total debt obligations to the United States was in excess of $3.5 Billion and it has encountered severe financial difficulties and thus, REA has restructured CAJUN's debt. App. 38a-46a. Since the decision of the courts below, CAJUN has sought protection from its creditors in a Chapter 11 bankruptcy proceeding, "In Re: Cajun Electric Power Cooperative, Inc., Debtor", Case No. 94-11474, USDC No. 94-CV-2763.

The compensation which petitioner, Morgan City, offered to respondent, SLECA, is so inadequate that it does not even

meet the meager requirements of Louisiana law.[3] Furthermore, the compensation, because it occurs over an eight year period, *without interest*, does not allow for the repayment of the federal loans in question as is required by 7 U.S.C. § 907.

In round numbers, the City of Morgan City offered SLECA $896,000 payable over an eight year period at approximately $112,000 per year. App. 48a, see also App. 14a. Simple mathematics will reflect that, in essence, Morgan City is demanding an interest free loan from both SLECA and the U.S.A. Morgan City, being a municipality, is not entitled to receive federally subsidized loans, much less interest free loans. Even though the payment for the taking of SLECA's best customers occurs on an interest-free basis over a period of eight years, SLECA loses all of its customers immediately and, thus, the revenue from all of those customers immediately, yet must continue to pay its loans to REA. It is obvious that there is no provision contained within Morgan City's offer to repay the federal loans because the funds are simply not sufficient to do so. Obviously, the REA Administrator was not happy with this arrangement and, for this reason and many others set forth in the detailed administrative review and opinion, declined to permit the transfer.

Petitioner offered CAJUN nothing for its interest.

Following the simple mathematics involved, therefore, Morgan City was to pay SLECA approximately $112,000 per year and yet was going to take from SLECA in the *Phase II* expropriation alone, gross revenues of $653,605 in the first year. App. 60a. These losses increase dramatically over time and, for example, by 1997 would be $1,020,684 which is far more than the amount offered by Morgan City. Furthermore, when the *Phase III* annexation and expropriation is considered, and based on the testimony of the mayor of the City of Morgan City, Honorable Cedric S. LaFleur, and its consulting

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[3] It did not go unnoticed by the trial court or the Fifth Circuit that the offer of Morgan City did not even meet the minimum requirements of Louisiana's expropriation law found in L.R.S. 19:101, et seq. The payment required by the state statute has been construed to mean cash payment. *City of Thibodaux v. Hillman*, 464 So.2d 370 (La. App. 1 Cir. 1985).

engineer, Harold Beard, this event would occur, then the losses to SLECA are substantially more. App. 62a and 63a.

A similar analysis regarding the impact to CAJUN was prepared and its losses are fairly significant as well. App. 67a-69a.

Thus, this expropriation case must be evaluated from the perspective of the impact of the unilateral taking of SLECA's customers on the objectives of the REA program, the structure adopted by REA to carry out the program, and the feasibility of and security for REA loans and/or loan guarantees made to SLECA and CAJUN. It is no secret that Congress established the REA and authorized the Administrator to provide long-term, low interest rate loans, subsidized by the federal taxpayer, to accomplish the objectives of providing reliable electric service at affordable cost in rural areas at a time when existing utilities refused to provide service in those rural areas.

Central to the goal of the REA program are the principles that electric service will be provided to the widest number of consumers possible, and that the cost and benefits of service will, to the extent practical, be shared by all members on the same basis. The organizational structure of the cooperatives and the financial policies of the REA are designed to further those principles. Hence, REA approves loans to serve new customers based on the economies of the borrowers' entire service area, including yet undeveloped areas, not just the economies of the new consumers. REA requires, as a term of the loan, that each borrower practice area coverage. Area coverage is the concept whereby a borrower extends electric service to *all* persons within its service area who meet all reasonable requirements, and that, to the maximum extent practical, such service be provided to all consumers at the same rates at minimum charges. See 7 C.F.R. 1710.103.

Hence, the RE Act imposes on the Administrator the duty to determine that each loan is feasible and that loan security is reasonably adequate. 7 U.S.C. § 904. As part of determining whether the loan security is adequate, the Administrator must obviously determine whether to permit transfers as that proposed by Morgan City including transfers which result in the

distribution cooperative and the federal government in essence making interest-free loans to a municipality. There is no basis whatsoever in the RE Act or in any jurisprudence which suggests that Congress even remotely intended for petitioner, Morgan City, to be the beneficiary of such an interest-free loan. Therefore, the entire basis of Morgan City's argument and its expropriation case is groundless.

REASONS FOR NOT ISSUING THE WRIT

1. THE DECISION OF THE COURT BELOW IS CORRECT AND IS IN HARMONY WITH OTHER DECISIONS ADDRESSING THE SAME ISSUE

Municipalities have no constitutional right to covet the property of another and since federal courts have clearly held that eminent domain is a governmental power, not a property right, there is no constitutional protection which includes the desired rights in the property of another. *Rivers v. Schweiker*, 684 F.2d 1144, 1158 (5th Cir. 1982); *United States v. 101.88 Acres of Land*, 616 F.2d 762, 767 (5th Cir. 1980).

Nevertheless, petitioner continues to pretend that its annexation program will be adversely affected and that somehow Morgan City will be denied due process. This argument is clearly backward. The annexation of the present area occurred in 1986. There is nothing in the record whatsoever to show that Morgan City has in any way been damaged by the actions of the courts below and, in fact, the contrary is true. Morgan City has not invested one dime in the additional generation and transmission facilities which would require service to the customers in the newly annexed area nor has it built any lines, transformers, substations or other facilities to those customers. Morgan City has, therefore, lost nothing. On the other hand, SLECA and CAJUN have both invested enormous sums of money in their utility programs and have borrowed enormous sums of money from the REA to finance these programs.

Morgan City now even pretends that other municipalities within the Fifth Circuit and the Ninth Circuit will somehow

be denied the right to annex new territories. This is a disingenuous argument to the extreme and there is absolutely nothing in the record to suggest that there has been any slowing of annexation or, for that matter, expropriation under the right circumstances.

2. THE CITIZENS OF THE NEWLY ANNEXED AREA DO NOT WANT POWER FROM MORGAN CITY EITHER

Morgan City attempts to sell the Court on the theory that its citizens will somehow be deprived of the right to buy electricity from it. Morgan City fails to tell the Court though that those same citizens voted nearly unanimously to continue accepting power from SLECA rather than Morgan City and so neither the Administrator of the REA, the officials at SLECA or the citizens involved desire to see Morgan City sell electricity in this area.

The citizens of the newly annexed area will not be deprived of electric service and, as was seen in the Affidavit of Calvin Savoy, the manager of SLECA's Amelia, Louisiana, office, signed by him October 13, 1992, and made part of SLECA's reply brief in opposition to Morgan City's motion for summary judgment before the District Court, an overwhelming majority of the SLECA utility customers which Morgan City seeks to condemn, desire to continue receiving electricity from SLECA rather than Morgan City. Specifically, 195 meters out of 250 meters were represented by the data supplied by Mr. Savoy. Eighteen members refused to sign the petition in question, 16 could not be contacted and 3 had moved before they were able to be contacted. Nevertheless, the subject petition contained 230 signatures, all of whom indicated a wish to continue receiving electricity from SLECA rather than changing to Morgan City. The questionnaire submitted to the approximately 252 customers directly affected by Morgan City's expropriation attempt read as follows:

> "I am presently receiving electric service from SLECA. I would like to continue receiving service from SLECA, and I am against the expropriation

suit filed by the City of Morgan. I do not wish to receive electricity from the City of Morgan City."

3. THE DECISION OF THE COURT OF APPEALS AND THE DISTRICT COURT IS CONSISTENT WITH THE DECISIONS OF SIMILAR COURTS AND THIS COURT'S PREEMPTION DECISIONS

The issue in this case is not new and has been presented before with the same results. The Administrator of the Rural Electrification Administration, pursuant to 7 U.S.C. § 907, may withhold approval of the expropriation and transfer of federally financed and mortgaged property since that statute does preempt, by conflict and pursuant to the Supremacy Clause of the United States Constitution, the state expropriation power granted by the State of Louisiana to the City of Morgan City. 7 U.S.C. § 907 provides in pertinent part:

> "No borrower of funds under Section 4 of Section 201 (7 U.S.C. § 904 or § 922) shall, without the approval of the Administrator, sell or dispose of its property, rights, or franchises, acquired under the provisions of this Act, until any loan obtained from the Rural Electrification Administration, including all interest and charges, shall have been repaid."

The Act does not require that the disposition be "voluntary" or "involuntary." It does not mention the terms "expropriation" or "eminent domain." Nevertheless, petitioner has argued and continues to argue that § 907 does not apply and, therefore, cannot preempt its actions because the statute does not specifically address expropriation law, but refers only to transactions that "sell or dispose" of property. This argument has been consistently rejected by the federal courts and case law has firmly held that prohibitive dispositions of property under § 907 include condemnations. *Big Bend*, 618 F.2d at 602 and *Pend Oreille*, 417 F.2d at 200-202. This result must follow from the express terms of § 907 because an expropriation or condemnation is nothing more than a forced sale and clearly disposes of a cooperative's property. Morgan City's argument, therefore, is anomalous. To interpret § 907 to allow the REA to bar a consensual sale of cooperative property to a

municipality based upon an express finding that the federal interest would be ill-served by that transfer, but then to allow the municipality to turn around and use state law in an expropriation suit over the REA's same objection would severely cripple the Supremacy Clause and render its meaning useless. The Supreme Court has always held that states may not accomplish indirectly what the Supremacy Clause forbids them from doing directly. *International Paper Co. v. Ouellette*, 479 U.S. 481, 495-496 (1987), 107 S.Ct. 805, *on remand*, 823 F.2d 545 (1987), *on remand*, 666 F.Supp. 58 (1987); *Bear Creek*, 816 F.2d at 1059.

The issue of the REA authority to approve or disapprove of expropriation proceedings pursuant to § 907 and to find same preempted pursuant to the Supremacy Clause has been addressed in both the Ninth and Fifth Circuits. These decisions were followed by the courts below. The issue of administrator approval of the condemnation of federally financed utility property was first presented in the case of *Public Utility District No. 1 of Pend Oreille County v. United States of America*, 417 F. 2d 200 (9th Cir. 1969). The Ninth Circuit, in an exhaustive opinion, reviewed the history of the REA Act, 7 U.S.C. § 901, et seq., and noted that in 1936, Congress was concerned with the fact that those then engaged in the business of generating electric energy had failed to extend electric service to the farms and rural areas of America and thus created the Rural Electrification Administration (REA). The Administrator was authorized to make low interest loans for rural electrification and to study the condition and program of electrification in rural areas pursuant to 7 U.S.C. § 903. The Court also observed that Congress determined that the national interest would be served by subsidizing the rural user of electricity and noted that Congress deliberately retained, in 1955, the requirement that the Administrator make a yearly, unelectrified farm survey, pursuant to 7 U.S.C. § 903(c).

At the time of its decision in *Pend Oreille*, the Ninth Circuit noted that it was apparently a case of first impression, although it did review other cases which touched the subject matter.

In *Public Utility District No. 1 v. Inland Power & Light Company*, 64 Wash. 2d 122, 320 P. 2d 690 (1964), the Ninth

Circuit noted that the Supreme Court of Washington, in holding that the United States was an indispensable party to this kind of condemnation suit, found that the United States had a substantial interest in the Inland properties. The Ninth Circuit also cited, in its historical review of the issue of administrator approval, *City of Fairbanks v. Electric Distribution System*, 413 P. 2d 165 (1966), where the Supreme Court of Alaska, in considering the indispensability of the United States as a party, noted the interest of the United States in the continued functioning of an REA subsidized distributor and the possibility that a condemnation of a part of the system might damage the capacity of the remaining system and, therefore, of the condemnee to continue in business.

Next, the Ninth Circuit cited *Alabama Power Company v. Alabama Electric Cooperative, Inc., et al*, 394 F.2d 672 (5th Cir. 1968), *rehearing denied*, 397 F.2d 809 (5th Cir. 1968), *cert. denied*, 393 U.S. 1000, 89 S.Ct. 488, 21 L.Ed 2d 465 (1968), wherein the Fifth Circuit, in holding the REA cooperative exempt from anti-trust laws, said this:

> "The power company would treat REA simply as a rival public utility. We agree with the recent decision of the Federal Power Commission in *Dairyland Power Cooperative*, 37 F.P.C. 12, 67 P.U.R. 340, that rural electric cooperatives are something more than public utilities; *they are instrumentalities of the United States*. (Emphasis added). They were chosen by Congress for the purpose of bringing abundant, low-cost electric energy to rural America. *Alabama Power, supra*, at p. 677."

The Ninth Circuit analyzed the Supremacy Clause of the Constitution of the United States, Art. VI, Clause 2[4], and at p. 202 of its decision, the Court stated:

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[4] The Supremacy Clause provides in relevant part: This Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby anything in the Constitution or laws of any state to the contrary notwithstanding.

> "Congress has declared the federal purpose to electrify the American farm. No matter how we characterize the vehicle which gets the electricity there, a state law so written that a state-favored utility can, by its unilateral action, interfere with the federal purpose, cannot stand under the Supremacy Clause of the Constitution of the United States."

Hence, the Court concluded at p. 903 of its decision that it would not permit a state law to frustrate an overriding federal purpose. The Court was careful to add that not all state condemnation actions would be affected, but rather only those where the taking for state purposes would interfere with the federal purpose.

Thus, at p. 201, in giving its reasons for reversing the trial court, the Ninth Circuit stated:

> "In an ordinary condemnation case, the condemnee loses something of value, but is paid for it. This is not an ordinary case, because what is sought to be taken here is part of a system, and even if the part taken is paid for, and if an award is made for the damage to the remaining portion, a question remains as to the capacity of the remaining portions of the system to function. As we understand the law of Washington, the capacity of a condemnee to continue to function as a healthy economic unit is not relevant to the issue of the taking. In this case, if, as a result of the condemnation, the loans to Inland were paid in full, but the remaining portions of the system could not continue to operate with decent service and at decent rates, the government would have been paid, but the purposes of the Rural Electrification Act would have been frustrated.
>
> The problem then comes down to this: May part of the distribution system of a federally subsidized distributor of electricity be taken under a law which looks only to the necessity of the taker, which vests in the taker the right to determine the necessity, and which makes no requirement that an underlying federal purpose be considered? We think not."

In *Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc.*, 618 F.2d 601 (9th Cir., 1980), the issue was revisited by the Ninth Circuit. In *Big Bend*, plaintiff attempted, under a state condemnation statute, to acquire property from Big Bend Electric Cooperative, Inc. Big Bend was financed by the Rural Electrification Administration pursuant to the Rural Electrification Act, 7 U.S.C. § 901, and had mortgaged all of its assets to REA in exchange for loans with the debt being in excess of $10 Million. The Court of Appeal affirmed the trial court's granting of a summary judgment in favor of Big Bend. The plaintiff, P.U.D., made essentially the same arguments which Morgan City now presents to this Court. In rejecting those arguments, the Court held at p. 602:

> "Before Big Bend can sell or dispose of its property, rights or franchises, it must obtain approval of REA. 7 U.S.C. § 907."

Faced with the denial of the transfer of property by the REA Administrator, the plaintiff sought to condemn the facilities pursuant to a Washington statute which is similar to the Louisiana statute under which Morgan City seeks expropriation rights herein. Again, the Ninth Circuit would not permit the condemnation to proceed, and held at p. 603:

> "In the instant case, REA has determined that the PUD's proposed condemnation would decrease the ability of the REA to serve this purpose. PUD disputes this determination, and contends that the proposed condemnation would actually facilitate rural electrification by making the distribution of electricity more efficient. PUD contends that because the issue of the wisdom of the taking is disputed, the District Court erred in granting a summary judgment for the United States and Big Bend. The argument does not follow.
>
> REA is the administrative agency charged by Congress with responsibility for facilitating rural electrification. REA was intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose. Courts properly give wide latitude to agency determinations in their

> area of expertise. See *National Broadcasting Co. v. Federal Communications Commission*, 516 F.2d 1101, 1122 (D.C. Cir. 1974) 170 U.S. App. D.C. 173, *cert. denied*, 96 S.Ct. 1105, 424 U.S. 910, 47 L.Ed. 2d, 313 (U.S. Dist. Col., 1976), *cert. denied*. This Court will not reverse this sort of agency determination unless it is arbitrary, capricious or an abuse of discretion. See 5 U.S.C. § 706.
>
> REA's determination that the proposed condemnation will interfere with rural electrification in Franklin County must be upheld unless it is shown to be arbitrary or capricious. PUD has not made a showing. We, therefore, affirm the District Court's summary judgment."

The Fifth Circuit has adopted the Ninth Circuit's reasoning and expressly approved the holding and rationale of *Big Bend, supra*, in the case of *City of Madison, Mississippi v. Bear Creek Water Association, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987).

It is apparent that the Fifth Circuit Court of Appeals has enforced the Supremacy Clause principles barring municipal condemnations that interfere with federal programs. In *Bear Creek, supra*, a municipality attempted to condemn property of a water association financed, in part, by the Farmers Home Administration under a federal program. The District Court granted the motion for summary judgment filed by the Farmers Home Administration because the water association was indebted to it, and by federal statute, namely 7 U.S.C. § 1926(b), prevented municipal condemnations of property owned by federally indebted water associations.

More importantly, in affirming the District Court, the Fifth Circuit cited, with approval, the opinion of the Ninth Circuit in *Big Bend, supra*, and emphasized that the Supremacy Clause prevents municipalities from condemning property Congress has protected, stating at p. 1060:

> "The case at bar exemplifies the evil Congress wishes to avoid. The association's affidavits showed that the municipalities desire to condemn . . . the most densely populated and thus most

> profitable territory now served by the association. Even if fair value is paid for the loss of the facilities, such an action would inevitably have an adverse effect on the remaining customers . . . in the form of lost economies of scale resulting in higher per-user cost. To allow expanding municipalities to 'skim the cream' by annexing and condemning those parts of the water association with the highest population density (and thus the lower per-user cost) would undermine Congress' purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their FMHA debts. See *Big Bend*, 618 F.2d 601 (9th Cir. 1980) (similarly rejecting utility's attempt to condemn property owned by a cooperative financed by REA)."

The two federal statutes involved are similar. In *Bear Creek*, 7 U.S.C. § 1926(b) and in this case, 7 U.S.C. § 907 do not specifically mention the term "condemnation," "eminent domain" or "expropriation." Nevertheless, the Courts have time and again rejected the argument which Morgan City now presents and have been well satisfied that Congress intended to protect the federal programs created by each statute so long as the condemnee owed monies which the Courts and/or the Administrator felt was significant, such that a taking of a part of the system would damage the remaining system and frustrate the underlying federal purpose of the Acts in question.

4. IN ADDITION TO THE STATUTORY BASIS FOR DENYING THE EXPROPRIATION, THERE IS ALSO A FRUSTRATION OF FEDERAL PURPOSE UNDER THE PREEMPTION DOCTRINE

The Supreme Court has explained that, under the Supremacy Clause, a federal statute may preempt state law in several different ways. *Louisiana Public Service Commission v. F.C.C.*, 476 U.S. 355, 368-369, 106 S.Ct. 1890 (1986); *Michigan Canners and Freezers Association v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461, 469, 104 S.Ct. 2518 (1984); *Pacific Gas & Electric Co. v. State Energy*

Resources Conservation and Development Commission, 461 U.S. 190, 203-204, 103 S.Ct. 1713 (1983); *Fidelity Federal Savings and Loan Association v. Delacuesta*, 458 U.S. 141, 152-153, 102 S.Ct. 3014 (1982).

Under conflict preemption, which is the applicable type here, state law is displaced to the extent that it conflicts and is inconsistent with a federal statute. Conflict preemption may occur in two ways. First, a provision of state law may be incompatible with a federal statute in the sense that it is impossible for a person to comply with both. However, even if state and federal law are not incompatible in this sense, a particular application of state law is still preempted if it would disturb, interfere with or seriously compromise the purposes of the federal statutory scheme. *California v. FERC*, 495 U.S. 490, 506, 1105 S.Ct. 2024 (1990), *rehearing denied*, 497 U.S. 1040 (1990). Under the latter aspect of conflict preemption, an application of state law that would frustrate the purposes of a federal statute is preempted. *Pacific Gas & Electric Co.*, 461 U.S. at 220-221; *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375, 389, 103 S.Ct. 1905 (1983). In *Arkansas*, the court noted that a particular application of state law that would "seriously compromise important federal interest" would be "implicitly preempted by the Rural Electrification Act."

This Court has indicated that there is no litmus test or formula for determining whether a particular application of state law would frustrate the purposes of a federal statute so as to give rise to preemption. Rather, the inquiry turns on the circumstances of the particular case, and the crucial question is whether the application of state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Thus, in *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404 (1941), this Court reached the following conclusion:

> "This Court, in considering the validity of state laws and in light of treatises or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability;

> inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear, distinctly marked formula. Our primary function is to determine whether, under the circumstances of the particular case, state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Thus, if a particular application of a state law would interfere with the operation of a federal statute, it is preempted under the Supremacy Clause even if the federal enactment does not by its terms preempt any state law.

Further, preemption by frustration of purpose does not depend on Congress' having fully occupied the field. Even if Congress does not fully occupy a field, a particular application of state law that would interfere with the operation of the federal program is preempted. See *Michigan Canners & Freezers Association*, 467 U.S. at 469-470 and *Jones v. Rath Packing Co.*, 430 U.S. 519, 525-526 (1977), *rehearing denied*, 431 U.S. 925, 97 S.Ct. 2201, 97 S.Ct. 1305.

This Court has also held that the focus of the frustration inquiry is on the "practical effect" that the state law would have on the federal scheme. *Michigan Canners & Freezers Association*, 467 U.S. at 478 and *Jones v. Rath Packing Co.*, 430 U.S. at 526.

When this federal frustration doctrine is considered in the light of one-sided, state expropriation statutes which permit municipalities to "skim the cream" of the co-ops' best federally financed customers, federal courts have been unanimous in holding that under the Supremacy Clause of the Constitution, a state municipal public utility cannot condemn property owned by a federally subsidized utility where the condemnation would interfere with the federal purpose of the Rural Electrification Act. *Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc.*, 618 F.2d 601, 603 (9th Cir. 1980); *Public Utility District No. 1 of Pend Oreille County v. United States*, 417 F.2d 200 (9th Cir. 1969).

In both cases, the Ninth Circuit reasoned that the proposed condemnation of a particular portion of a federally subsidized rural electric system, even if compensated for under state law (which is something Morgan City even failed to do in this case), would impair Congress' objective of providing reliable, low cost electric service to rural America, because removal of the targeted portion of the system would weaken the remainder of the system and lessen its ability to function effectively:

> "This is not an ordinary case because what is sought to be taken here is part of a system and even if the part taken is paid for, and if an award is made for the damage to the remaining portion, a question remains as to the capacity of the remaining portions of the system to function."

Significantly, the Ninth Circuit also held that the Rural Electrification Administration's reasoned assessment that a proposed condemnation of rural cooperative property is likely to frustrate the purposes of the federal program "must be upheld unless it is shown to be arbitrary or capricious." *Big Bend*, 618 F.2d at 603. The Ninth Circuit explained:

> "REA is the administrative agency charged by Congress with responsibility for facilitating rural electrification. REA was intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose. Courts properly give wide latitude to agency determinations in their area of expertise . . . This Court will not reverse this sort of agency determination unless it is arbitrary, capricious, or an abuse of discretion. See 5 U.S.C. § 706; *Big Bend*, 618 F.2d at 603."

The Fifth Circuit has obviously followed this reasoning in the present case as it had also done in the matter of *City of Madison v. Bear Creek Water Association, Inc.*, 816 F.2d 1057 (5th Cir. 1987). In embracing the Supremacy Clause principles of frustration of a federal purpose, the Fifth Circuit reasoned as follows:

> "Even if fair value is paid for the lost facilities, such an action would inevitably have an adverse effect on the remaining customers . . . in the form of

> lost economies of scale and resulting higher per user costs. To allow expanding municipalities to 'skim the cream' by annexing and condemning those parts of a rural utility with the highest population density and thus the lowest per user cost, would undermine Congress' purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations' ability to repay their federal debts. See *Public Utility District No. 1 of Franklin County v. Big Bend Electric Cooperative, Inc.*, 618 F.2d 601 (9th Cir. 1980); *Bear Creek*, 816 F.2d at 1060."

Turning to the factual record in this case, the crucial document is the REA's Administrator's 28 page, single-spaced Decision[5] with approximately 300 additional pages of support data and computations independently reviewed by that agency in comprehensive detail. The agency determined that Morgan City's proposed expropriation of the targeted portion of the SLECA system would frustrate the purposes of the rural electrification program enacted by Congress. The factual basis underlying the agency's decision is undisputed, particularly the core underpinnings of the REA's determination which warrant the conclusion that this expropriation would frustrate important federal interest under the Rural Electrification Act. Specifically at p. 9[6] of its Decision, the REA said this:

> " . . . A copy of the preliminary analysis prepared by the Financial Services Staff to determine the effect the expropriations could have on CAJUN is attached as Exhibit "B". The preliminary analysis indicated that in 1992, the combined Morgan City *Phases II* and *III* expropriations would result in gross lost revenue from SLECA of $768,000 *annually*, and net lost revenue of $535,000 *annually* to CAJUN."

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[5] Petitioner's Appendix, p. 37a-75a

[6] App. 49a

With this enormous "cream skimming" exposed by the REA staff, the Administrator reached the following results and conclusions beginning at p. 24[7] of The Decision as follows:

> "In addition to the detrimental effect on the payment of federal debt, the effect of the *Phase II* expropriation *frustrates the objectives of the REA Program in Louisiana by increasing the likelihood of rate increases."* (Emphasis added). As stated above, great effort has been put into lowering the rural electric rates in Louisiana so that they are supportable by the local economy and more competitive with local utilities. REA has agreed to a major reduction in CAJUN's current debt service payments, to effectuate a wholesale rate reduction in an attempt to improve the viability of the Louisiana Rural Electric Cooperative System. The Morgan City *Phase II* expropriation, at a minimum, undermines that effort."

At p. 25,[8] the Administrator continues:

> "The proposed expropriation must be evaluated in the light of the interests of the REA and the federal taxpayer in carrying out the RE Act objective of providing reliable electric service in rural areas as low as is practical, in maintaining and improving the financial stability of borrowers, and protecting the feasibility of and security for outstanding loans, and in assuring that outstanding REA loans will be repaid."

At p. 26,[9] the Staff and Administrator reached this conclusion:

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[7] App. 71a

[8] App. 72a

[9] App. 73a

> "Any further deterioration in the financial condition of SLECA, CAJUN and the other distribution members will *frustrate the RE Act objective* of developing and maintaining the financial strength of the REA borrowers." (Emphasis added)

At p. 26,[10] the Staff and Administrator continue their findings and conclusions as follows:

> "Any loss of high density/high growth or high margin/service producing service territory will have a long-term, adverse impact on SLECA . . . It is clear that there will be a reduction in the amount of payment received by REA on the B Note, as a result of load loss by CAJUN, and that the interests of REA and the federal taxpayer, in maximizing recovery on outstanding loans will be *frustrated*." (Emphasis added.)

At the bottom of p. 26,[11] the Staff and Administrator continue with their report and decision when it is stated that:

> "The loss of any of this property and service rights would *frustrate* the objectives of the Act to provide electric service at reasonable rates, to develop the financial strength of REA borrowers, to maintain the feasibility of and security for outstanding loans and to insure that outstanding loans are repaid."

At p. 27[12] of The Decision, the Staff concludes and recommends the following:

> "For the reasons summarized above, we believe that the disposition of the SLECA property, including *Phase II* and *Phase III* proposal of Morgan City and the proposal of the City of Houma is contrary to the interests of REA and would *frustrate* the objectives of the RE Act. Therefore, we recommend that, under Section 7 of the RE Act, you withhold approval of the disposition pursuant to expropriation action."

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[10] App. 73a

[11] App. 74a

[12] App. 74a

Thus, the substantial record in this case, which exceeds 12 volumes, the findings of the REA Administrator, the decision of the trial judge, Honorable Rebecca F. Doherty, and the Decision of the Fifth Circuit Court of Appeals, including its per curiam decision, clearly support a finding of frustration of a federal purpose and, thus, under the application of conflict preemption, an application of state law that would frustrate the purposes of a federal statute is preempted.

5. THERE IS NO GENUINE ISSUE OF MATERIAL FACT IN THIS CASE AND THE MOTION FOR SUMMARY JUDGMENT GRANTED BY THE COURTS BELOW MUST STAND

The summary judgment procedure authorized by Rule 56 is a method for promptly disposing of actions in which there is no genuine issue as to any material fact or in which only a question of law is involved. Thus, parties need not wait until their case is fully tried but may seek a final adjudication of the action by a motion under Rule 56. In this way, dilatory tactics resulting from the assertion of unfounded claims or the interposition of specious denials or sham defenses can be defeated. Parties may be accorded expeditious justice, and some of the pressure on court dockets may be alleviated. *Simmons v. McGuffey Nursing Home, Inc.*, 619 F.2d 369, 371 (C.A. 5th 1980, Quoting *Wright & Miller*).

Hence, the courts search for *genuine* issues of fact, not any issues of fact, because the rule is intended to prevent vexation and delay, improve the machinery of justice, promote the expeditious disposition of cases, and avoid unnecessary trials when no genuine issues of fact have been raised or can be supported. *Wright & Miller*, Volume 10, Page 564, 1983; *Slaughter v. Allstate Insurance Company, et al*, 803 F.2d 857 (5th Cir. 1986); and *Washington v. Armstrong World Industries, Inc.*, 839 F.2d 1121 (5th Cir. 1988). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually insupportable claims," *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986), *on remand*, 826 F.2d 33 (1987), *cert. denied*, 484 U.S. 1066, 108 S.Ct. 1028, 98 L.Ed.2d 992

(1988), thereby permitting courts to avoid "protracted, expensive and harassing trials." *Mieri v. Dacon*, 759 F.2d 989, 998 (2d Cir. 1985), *cert. denied*, 474 U.S. 829, 106 S.Ct. 91, 88 L.Ed.2d 74 (1985).

Thus, the Supreme Court has reaffirmed the value of pretrial resolution of cases in appropriate circumstances. See *Celotex Corp. v. Catrett*, *supra*; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). As the Supreme Court noted in *Celotex*: "Summary Judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy and inexpensive determination of every action.' " 477 U.S. at 327, 106 S.Ct. 15 2555 (quoting Fed. R. Civ. P. 1).

The core undisputed facts of this case are as follows:

1. Morgan City seeks to expropriate a dense portion of a federally-subsidized utility;
2. *Phase I* of the expropriation has occurred and did not affect SLECA customers; *Phase II* of the annexation has occurred and does affect at least 252 of SLECA's best customers;
3. *Phase III* will occur and affects an additional 270 SLECA customers according to the sworn testimony of Morgan City's own officials and witnesses, namely its mayor, the Honorable Cedric LaFleur, and its expert, Harold J. Beard. Judge Doherty's decision accepts the testimony of Mayor LaFleur and Mr. Beard;[13]
4. There may be other expropriations commenced by other municipalities, namely the City of Houma, which while not controlling, cannot be ignored because an additional 602 SLECA customers would be involved;
5. After a considerable period of negotiation, Morgan City offered to SLECA the sum of

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[13] App. 14a; 837 F.Supp. 195, 197

$895,955.78, to be paid over a period of eight years in the amount of $111,994.47 per year;

6. The foregoing offer is, in essence, an interest-free loan because no interest is included in the eight-year payout;
7. At the time of the REA staff report and the decision of the Administrator, SLECA, in round numbers, owed approximately $35 Million, of which $25 Million was owed to REA and the remainder to CFC;
8. At the time of the same report, CAJUN owed REA between $3.2 and $3.5 Billion;
9. Morgan City at no time made any offer to CAJUN;
10. SLECA, CAJUN and the overall integrated rural system in Louisiana are in poor financial health. CAJUN, so as to meet its debt obligations, required a large debt restructuring agreement, which occurred in 1990;
11. SLECA purchases all of its power requirements from CAJUN through an all-requirements wholesale power contract that extends through December 31, 2026;
12. SLECA, as did all rural cooperatives, obtained a 99-year franchise when SLECA was created in 1938. This franchise was obtained from St. Mary Parish and includes the area being expropriated. REA assumed a 45-year life at the time of its decision regarding that franchise;
13. If the expropriation is permitted to occur against the wishes of the Administrator, SLECA would be stripped of its high-density, high-profit service area and would be less able to provide adequate service to its low-density, low-profit, more rural areas; and
14. The REA Administrator and his staff found that the expropriation would frustrate the objectives of the RE Act.

6. EVEN STATE COURTS HAVE NOT UNIFORMLY REJECTED THE REA'S FRUSTRATION THEORY

As noted earlier in this brief, at least two state courts *Public Utility District No. 1 v. Inland Power & Light Company*, *supra* and *City of Fairbanks v. Electric Distribution System*, *supra*, have agreed with the holdings of the Ninth and Fifth Circuits regarding unilateral expropriation actions which permit "cream skimming." Furthermore, the two cases cited by petitioner in its brief at p. 14 and p. 15 are distinguishable and inapposite from the issue decided by the courts below. For example, *City of Rochester v. People's Co-op Power Association, Inc.*, 505 N.W. 2d 621 (Minn. App. 1993) was a case with manifestly different facts than this one. Specifically, the trial court in that case at 483 N.W. 2d 477, No. C090281, Minn. 3d JDC, Homestead County, noted as did Judge Doherty, App. 19a:

> "There is no evidence that the REA Administrator has determined that the proposed condemnation would decrease the ability of the REA to achieve the purposes of the Rural Electrification Act. Apparently, in the almost three years since this action began, the Administrator has conducted no analysis, economic or otherwise, to determine what the effect would be on People's or the rural electrification system if People's loses the right to service some of its facilities within the Willow Creek Sanitary Sewer District and the incinerator site within that district."

Here, however, the Administrator, unlike the *Minnesota* case, has performed an exhaustive, independent analysis of the forced expropriation and has reviewed not only its own staff's findings and conclusions, but that of two independent engineering firms, all of which have unanimously determined that the taking would be harmful to SLECA, CAJUN and the REA. Based on this finding, it is the duty of the Administrator to prevent such damage. In the *Minnesota* case, for whatever reason, the Administrator had not made such a study and analysis and, therefore, the court was correct in concluding that there was no basis to prevent the taking. In other words,

the court would not consider a mere *facial challenge*[14] with no record to support it.

7. THE DECISION OF THE COURT OF APPEALS IS NOT INCONSISTENT WITH THIS COURT'S PREEMPTION DECISIONS

Respondent rests its hopes on this Court granting a writ of certiorari by citing several cases which it says are controlling, among them, *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 103 S.Ct. 1713 (1983); *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375, 389, 103 S.Ct. 1905 (1983); *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 99 S.Ct. 1448 (1979), *on remand*, 600 F.2d 478 (1979); and, *Wabash Valley Power Association, Inc. v. Rural Electrification Administration*, 903 F.2d 445 (7th Cir. 1990).

Those cases are clearly distinguishable and, in fact, support the panel's decision below.

1. *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, supra

The *Arkansas* case was not an expropriation case, it was a rate case and a hypothetical one at that. The case concerned the issue of who had jurisdiction to set rates, the state of Arkansas or the REA. At the outset, the Supreme Court noted at p. 1909 of its decision that:

> "Where a statute regulates *evenhandedly* to effectuate a legitimate local public interest and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."

As this Court knows, however, state expropriation statutes are anything but evenhanded. In fact, the statute in

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[14] App. 28a. The Fifth Circuit per curiam Decision held correctly that "SLECA does not assert a facial challenge . . . "

question does not consider any of the rights or arguments of the parties to be expropriated. Furthermore, the Supreme Court at p. 1915 of its *Arkansas* decision recognized that a particular rate set by the Arkansas PSC may so seriously compromise important federal interests including the ability of the AECC to repay its loans, as to be implicitly preempted by the Rural Electrification Act. The court said this:

> "We will not, however, in this *facial challenge* to the PSC's near assertion of jurisdiction, assume that such a hypothetical event is so likely to occur as to preclude the setting of any rates at all."

Thus, the *Arkansas* case was primarily a jurisdictional battle, and in large measure, a hypothetical case because the state Public Service Commission had not yet set any rates which damaged the Arkansas utility or the REA. In effect, the REA's concerns were found to be premature. Yet we do glean one thing from the *Arkansas* court, and that is that there is a role for frustration of federal purpose if the specific situation is one where interference with the federal interest can be shown. This is similar to the "case by case" analysis which the Supreme Court orginally set down in *Hines v. Davidowitz, supra.*

2. *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, supra

This case involved a contest between a state energy commission which concerned itself with permitting regarding the disposal of nuclear waste materials in the State of California vis-a-vis the Nuclear Regulatory Act. The Court simply found that because the state regulatory commission was directed to make determinations of the suitability of storage facilities on a "case by case basis" before granting a permit for the construction of any additional nuclear power plants, and because there was no way to know whether the commission would ever find a nuclear plant storage capacity to be inadequate, the challenge to the statutory requirement based on a claim of preemption was not ripe for adjudication and was obviously once again premature. P. 1721.

Nevertheless, the Supreme Court clearly recognized the doctrine of frustration of purpose but simply found that the issue was not ripe for adjudication because the state of California had not yet done anything to conflict with federal law. In this case, however, Morgan City has filed an expropriation suit and offered a totally insufficient type of compensation thus interfering with SLECA and CAJUN's ability to repay its debt and making the matter ripe for adjudication.

3. *United States v. Kimbell Foods, Inc.*, supra

This is a case involving the Farmer's Home Administration as the holder of a security interest in certain debtor crops and farm equipment which conflicted with a state's mechanic lien in the sum of $543.81. The case has nothing to do with expropriation law and is not applicable to the case at bar.

4. *Wabash Valley Power Association v. Rural Electrification Administration*, supra

In this case, the REA sought a declaratory judgment in support of its action to unilaterally increase a cooperative's wholesale electric rates without a cost of service study, rate study, hearing or any administrative action or finding. In essence, REA, in a letter written to Wabash and the regulatory officials of the states of Indiana and Michigan, determined that by simply writing a letter that it had the authority to set rates for the generating and transmission company and the entire state of Indiana. Naturally, the court rejected this type of action and this writer certainly recognizes that it is not good policy for anyone, be it REA, the Public Service Commissions or any party to unilaterally set utility rates affecting millions of customers with the stroke of a pen in the form of a letter. Again, however, the Morgan City expropriation case is not about writing letters which unilaterally set rates. A careful review of the *Wabash* case will reveal that the REA had no statutory authority to write the subject letter to Wabash and the state regulators raising rates on its own. In this case, however, there is a statutory basis which leads to the preemption because of the frustration of a federal purpose, namely 7

U.S.C. § 907, which has been previously recognized and adopted by the federal courts in *Pend Oreille*, *Big Bend*, *Bear Creek* and by the courts below in this case. Finally, a careful reading of *Wabash* will reveal that at p. 456 and p. 457, the Court notes that:

1. REA failed to place into evidence in the courts below that which would support the theory which it was attempting to assert; and that

2. REA had failed to ask for the appointment of a trustee.

Having failed to take the necessary steps in the proceeding, the Court was in no mood to permit a bare bones letter from REA to Wabash, the bankruptcy court and the Public Service Commissions of Indiana and Michigan to decide the issue of rates in those states.

CONCLUSION

The panel's decision below is correct and need not be considered by this Court. The federal government, when acting within the confines of its statutory and/or constitutional authority, is empowered to preempt state law to the extent necessary to achieve a federal purpose particularly when the state law obviously and clearly conflicts with federal law. 7 U.S.C. § 907; Constitution of the United States, Article VI, Cl. 2. It is obvious from the record that the decision of the Court below clearly supports conflict preemption. The Fifth Circuit correctly recognized that the critical question was whether or not Louisiana's expropriation law, which is unilateral in nature, would frustrate the federal purpose underlying the REA Act and, hence, conflict with it. While there is no one perfect litmus test for this determination, it is clear from the record in this case that Morgan City's attempt to gain an interest-free loan and, therefore, a federal subsidy for itself by taking the most profitable, densely situated customers of SLECA in the age-old game of "cream skimming"

could not be allowed to stand. The petition for writ of certiorari should be denied.

Respectfully Submitted:

JAMES M. FUNDERBURK, # 5785
DUVAL, FUNDERBURK, SUNDBERY & LOVELL, L.L.P.
101 Wilson Avenue
P. O. Box 3017
Houma, Louisiana 70361
(504) 876-6410
Attorney for Respondent

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